

Notice of Class Action Settlement and Claims Process

Dougie Lester v. Pay Car Mining, Inc., et al.,

Case No. 5:17-cv-00740

United States District Court for the Southern District of West Virginia

A class action lawsuit is currently pending in the U.S. District Court for the Southern District of West Virginia, Case No. 5:17-cv-00740. The named plaintiff and certified representative of the class in this action is Mr. Dougie Lester. Mr. Lester worked for Pay Car Mining, Inc. and/or the other Defendants in McDowell County, West Virginia. Mr. Lester alleges that from September 2, 2012 through December 1, 2012, Pay Car Mining, Inc., Bluestone Industries, Inc., Keystone Service Industries, Inc., Mechel Bluestone and/or Bluestone Coal Corporation (“Defendants”) laid off eighty-nine (89) of their employees at the Pay Car Mine, including the Plaintiff, without giving these employees advance notice of their layoffs as required by the Worker Adjustment and Retraining Notification (“WARN”) Act. The Defendants deny these allegations.

The Court has approved a settlement of the case. This notice informs you of how to file a claim for your award under the settlement. The class is defined as:

All full-time employees of Bluestone Industries, Inc. (“Bluestone”) who were terminated from employment, or subject to a reduction in force, at the Burke Mountain Mine Complex, including at the Pay Car Mine, from September 2, 2012 through December 1, 2012.

The Parties in the case listed above have reached a settlement for a total value of \$1,040,000.00. You are entitled to an award of \$9,550.56 under that settlement. This Notice informs you of how to claim an award under that settlement.

Please call the Workers’ Rights Program at Mountain State Justice to set an appointment to claim your award under the settlement. This is the number that you should call: (681) 207-7510. If you have questions about your rights, you can speak with Attorney Sam Petsonk at MSJ’s Workers’ Rights Program.

The Court has authorized this Notice of the Settlement.

A. THE NATURE AND COURSE OF PROCEEDINGS.

This lawsuit sought to recover a penalty under the WARN Act, equal to sixty days of wages and benefits, because the Defendants allegedly failed to provide the two months of advanced notice prior to terminating or reducing the workforce, including you, at the Burke Mountain Strip Mine in the fall of 2012, allegedly in violation of the WARN Act.

On January 20, 2017, Mountain State Justice filed this lawsuit on behalf of Mr. Dougie Lester, seeking to recover damages under the WARN Act for all miners at the Burke Mountain

Mine Complex, including the K2 Plant, who were laid off during the specified period. On March 1, 2017, the Defendants filed a Motion to Dismiss, arguing that the claim was subject to a two-year statute of limitations. Mountain State Justice opposed that Motion, and argued for a five-year statute of limitations. On July 3, 2017, the Court denied the Motion to Dismiss and found that the claim was subject to a five-year statute of limitations and thus could go forward towards trial. On June 6, 2018, the Court certified the case as a class action.

Settlement. On July 12, 2018, the Parties reached a Mediation Agreement to resolve this litigation, providing \$1,000,000.00 as a common fund for the miners who were laid off from full-time employment at the Burke Mountain Mine Complex from September 2, 2012 through December 1, 2012. Defendants agreed to pay 15% of that fund to Mountain State Justice as an attorney fee. The Defendants also agreed to pay \$40,000.00 to the class representative and counsel by September 10, 2018. The Defendants agreed to pay late fees of \$1,000.00 per day for each day that a payment is late under this settlement.

The Court has not rendered judgment on the merits of the claims in the case. The Court has approved the settlement entered by the parties.

B. THE SETTLEMENT.

- (1) **Relief:** The awards are expected to be paid out to the class members in three equal payments, subject to and contingent upon the Defendants making the scheduled payments in full and on time. If the payments to the class members are late, the Class Counsel will seek to recover \$1,000.00 in daily late fees for those class members pursuant to the settlement agreement. If the payments are timely made by the Defendants, the amounts paid to you as a class member will be:

<u>Payment Amount</u>	<u>Date Available to Class Members (expected)</u>
\$3,183.52	September 16, 2019
\$3,183.52	March 16, 2020
\$3,183.52	May 15, 2020

Details of the settlement are explained below and also set forth in the attached document labeled “Mediated Settlement Agreement.”

(a) **Eighty-nine (89) class members.** The class counsel (Mountain State Justice), who represent Mr. Lester and you as class members, have researched the case extensively and have reached agreement with Bluestone’s counsel that there are eighty-nine (89) class members.

(b) **Common fund for class members.** The common fund for distribution to the class members equals \$850,000.00. Each class member will receive a pro rata share of that fund---**\$9,550.56 per miner.**

(c) **Attorney fees and costs.** The attorney fees and costs payable to class counsel (Mountain State Justice) would equal fifteen percent of the agreed-upon settlement fund, or \$150,000.00.

(d) **Three installments.** The Defendants agree to pay in three equal installments to Mountain State Justice by no later than: August 31, 2019, February 28, 2020, and April 30, 2020.

Mountain State Justice will administer the settlement by dividing those sums equally and issuing checks to the class members by the dates designated above in the individual amount of \$3,182.56 apiece. The payments to class members shall be issued as soon as practicable after Mountain State Justice receives each installment from Defendants.

(e) **Daily penalties for late payment by Defendants.** Defendants have entered a Judgment Order for the amounts stated herein which the Plaintiffs agree will not be executed upon unless the Defendants default upon the payment of the amounts stated herein within the periods stated herein. In lieu of the legal rate of interest, the Defendants agree to pay a penalty of One Thousand Dollars (\$1,000.00) per day for each day a payment due hereunder is late with the right of a fifteen (15) day cure period. Should a payment be late and not cured within 15 days of the due date, then the penalty of One Thousand Dollars (\$1,000.00) will be retroactive to the original due date of the payment.

(f) **Class representative fee.** The Defendants agree to pay to the class representative the sum of \$10,000 due within 60 days of July 12, 2018, i.e. by September 10, 2018, and the applicable late fees.

(g) **Class administration fee.** The Defendants agree to pay a class administrative fee to Mountain State Justice of \$30,000.00 due within 60 days of July 12, 2018 in order to cover the costs of the administration of the claims, verification of class members, and management of class notice, and the applicable late fees.

(h) **Cy pres (leftover amounts).** Any unclaimed portion of the settlement proceeds will be distributed to a charitable or public program in McDowell County, West Virginia.

(6) **Release:** The settlement of this class action releases and dismisses all of the claims under the WARN Act arising from the 2012 layoff that the Plaintiff asserted in his Complaint against Defendants.

C. WHAT TO DO NOW TO PARTICIPATE IN THE SETTLEMENT.

(1) **If you have not done so, call Mountain State Justice at (681) 207-7510.** Make sure that your correct address is on file. If this notice was sent to the wrong address, you should immediately send a letter to Mountain State Justice at the address below stating your correct home address.

(2) **Make an appointment to come to the Mountain State Justice offices** in Beckley or Charleston to review the settlement and receive your initial payment.

(3) If you have any other questions, you may consult with class counsel, Sam Petsonk or Bren Pomponio, at (681) 207-7510, or by mail at Pay Car Class Settlement, Mountain State Justice, Inc., 223 Prince Street, Beckley, WV 25801.

(4) **DO NOT ADDRESS QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR TO THE JUDGE.**

Sam B. Petsonk, Esq.
Bren J. Pomponio, Esq.

Mountain State Justice, Inc.
223 Prince Street
Beckley, WV 25801
(681) 207-7510
Class counsel